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RLA's Vol. No.

O. EVIDENCE

1944-52

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92.	O.No.18084/31-10-52.	Re: Claim by the company on account of articles supplied to Camp Comandant at theoral request. Question whether an affidavit by the firm in this respect would be sufficient to support the claim. Indian Evidence Act,1872,sec.34.	37-38
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94.	O.No.1394-Confl. 15-12-52.	Re: Production of in the Court or supply of copies to the public of Govt. G.Rs. and other Govt. documents and in particular G.Rs. which contain confidential opinions of the Govt	41-42
95.	O.No.21227/17-12-52.	Re: Disclosure of landlord's represen-tition's statement and statement of the accupant of the premises.	43-44
96.	O.No.21010/13-12-52.	Re: Production of documents. Question re: claiming privilege in respect of police reports & Inspectors reports connected with the documents in question.	45-46

80- 20362/1-10-51 16091/10-10-51 Re: Prosecution for defamation against the Editor of a News Paper. Production of the Document Viz. issue of a News paper in question in the Court. Question whether in the absence of the original issue of the New Paper mere translation of the article will be suffi - cient for suffessful prosecution.

O. Evidence/1952

(Copies not made) 17-18

81. 1836/4-2-52 Question whether the photo copy of the Eleventh Decree of the Reich Citizen Law dated 25-11-41, ;published in Verlin in the German Govt. Gazette dated 26-11-41, produced by Jewish Association along with a translation in English of thexx relevant portion thereof can be accepted as valid proof of the original. Indian Evidence Act, 1872 Secs. 63, 64 and 74

1-4

82. 4719/28-3-52 Question whether there is any legal objection in supplying a copy of the sanad to Shri S.G. Kaveri, which is required by him for proving title to a site in Poona, filed by him on behalf of Shri Raghvend ra Swami Muttu. Indian Evidence Act, 1872, secs. 76 and 123

5-6

83. 308-Confl/29-3-52 Re: Production of documents in respect of correspondence between H.H. the Maharaja of Dharampur and the Govt. of Bombay

7-8

84. 6237/29-3-52 9479/12-5-52 9274/4-6-52 Re: Sulphate of Ammonia - Theft of - det ected by the Govt Supervisor. Production of 1. stock Book maintained at the godown and (2) official documents showing that sulphate of Ammonia was a controlled commodity for the conduction of prosecution. Question whether the above mentioned documents can be produced as requested by Presy. Magistrate

9-16

85 654-Confl/8-7-52 Question whether Govt. is bound to and can be compelled to disclose the confidential report of the Police Sub-Inspector, Anti Cooruption Branch.

17-18

86 693-Confl, 15-7-52 G.L., O.W.D.No.PSN-6051-F-Confl dt/11-9-52.
Re: Prosecution of Shri A.M.Shaikh,, officiating Divisional Accountant.
(Cipies not made) 19-20

87. 3592/19-2-52 6032/21-4-52 Re: Supply of certified copies of official documents to private persons. Indian Evidence Act, 1872. sec. 123

21-24

88. 18708/6-8-52 13158/11-8-52 Re: Production of letters written by a private party to the controller of Accommodation regarding the suppressed vacancy as they are required on behalf of theprosecution in a case launched by the Police against one

Contd--- 12---

88(Conted)			Shri M.P. Kerawala for falsely personating as an employee of Accommodation Dept. 25-28
89.	21732 16-9-52	15493 20-9-52	Re: Inspection of documents in the possession of Govt. by the Soliticors on behalf of their clinets. Question regarding claiming privilege in respect of. 29-32
90.		988-Confl 19-9-52	Re: Discharge of Ex-Head Master of a Govt. adided school. Information required by the Editor, Lokmanya, Bombay in respect of the discharge. Question whether the same can be supplied. 33-34
91.		15732 24-9-52	Re: Production of documents in the possession Govt. ina court of Law. Question regarding claiming privilege under sec. 124 of the Evidence Act, 1872. 35-36
92.		18084 30-10-52	Re:- Calim by the company on account of articles supplied to Camp Commandant at theirak request. Question whether an affidavit by the firm in this respect would be sufficient to support the claim. Indian Evidence Act, 1872, sec, 34. 37-38
93.		19941- 28-11-52	Re: Official communications- Supply of copies of- to Municipal Corporation, 39-40
94.		1394-Confl 15-12-52	Re:- Production of in the Court or supply of copies to the apublic of Govt. G.Rs. and other Govt. documents and in particular G.Rs. which contain confidential opinions of the Govt. 41-42
95.		21227 17-12-52	Re: Disclosure of landlord's representation's statement and statement of the accupant of the premises 43-44
96.		21010 13-12-52	Re: Production of documents. Question re: caliming privilege in respect of police reports & Inspectors reports connected with the documents in questio 45-46-

Mjr/5/6
2 Cs.

In the Solicitor's letter dated 4th December 1943 copies of statement taken by Inspectors and all other necessary papers have been demanded. The same request was repeated by the Solicitors on the 11th December 1943. The statements recorded by the Rationing Officer (Mr. Bhujawalla)are at page 7-13 and page 39. Those recorded by the Inspectors are at pages 19-22 and pages 37-38,Confining the attention to the statements recorded by the Inspectors. It appears that the Statements recorded are of persons who are not connected with the ration shop No.288. All the three statements at pages 10-20,21-22and pages 37-38 seem to have been given in confidence to the Insepctor and the Chief Inspector. Provided that the rationing authorities think that disclosure would do harm to public interests, they would be vocered by section 124 of the Indian Evidence Act, 1872. No public officer shall be compelled to disclose communication made to him in official confidence when he considers that the public interests would suffer by the disclosure."

As the Soliciters have not asked for the copies of statements recorded by the Rationing Officer (Retail(Mr,Bhujwalla the question whether the statements are public documents within the meaning of section 74 of the Indian Evidence Act has not been considered. But under section 164 of the Criminal Procedure Code the court is bound to issue copies of statements recorded under that section (vide p. 207, Sarkar's Evidence Act). On that analogy the Government should have no objection to supplying the copies of the statements made before the Rationing Officerat pages 7 to 13 and page 39 by the persons connected with the shop on payment of fees prescribed by Government.

Sd/- P.N.Moos
3-1-44

Remembrancer of Legal Affairs.

U.R. to the Controller of Rationing, No 18, dated 3rd Jan. 1944.

Mjr/2/6
4 Cs.

Attention is invited to section 85 of the Indian Evidence Act. In order to obtain the benefit of the presumption in that section it is necessary that the power of attorney should be executed before a magistrate or other person therein designated. Any magistrate and not necessarily 1st Class, will suffice.

Sd/- P.N.Moos
14/1/51

Remembrancer of Legal Affairs..

U.R. to H.D. (Spl) No. 344 , dated 15-1-1948

Mjr/2/6
4 Cs.

Office of the R.L.A.

It appears that a telegram was sent on 2nd September 1942 approving the appointment of Mr. Whitworth as Administrator of the Ahmedabad Municipality. If this telegram is held to be a valid order of appointment of Mr. Whitworth the Ahmedabad Municipality is likely to succeed and not otherwise. It is necessary to prove that the telegram was sent by the authority of the Government of Bombay (see P.V.Naidu c. King Emperor 42 Mad 885). Consequently as desired by the pleader for the municipality certified copies of the original order or orders of Government on which the telegram of 2nd September 1942 was sent may be supplied to him

Sd/- P.M. Moos,
21/7/41

e.c.
Remembrancer of Legal Affairs.

U.R. to G.D., No. 739, dated the 28th January 1944.

Mjr/2/6
4 Cs.

Office of the H.L.A.

If the documents in question are public documents within the meaning of section 74 of the Indian Evidence Act, 1872, then under section 76 of that Act the member will have a right to obtain a certified copy. If the documents are not public documents, the right to inspect will not of itself give to the member the further right to obtain a certified copy

Sd/- P.N.Moos
4/5/44

Remembrancer of Legal Affairs.

U.R. to P & S.D., No. 3282, dated the 5th May 1944.

Mjr2/6
4 Cs.

Office of the R.L.A.

Under section 33 of the Indian Evidence Act is would be competent for the prosecution to tender in evidence at the Sessions trial the deposition of a witness duly recorded before the committing magistrate when that witness is dead or cannot be found etc.; but the admissibility of such deposition is subject to the proviso that the accused in the proceedings before the committing magistrate had the right and opportunity to cross-examine

Sd/- P.N.Moos
5/10/44

o.c.

Remembrancer of Legal Affairs.

U.R. to H. D., No. 6944, dated the 6th October 1944.

Mjr/2/6
4 Cs.

Office of the R.L A.

The first question raised for the consideration of the R.L.A. is whether the letter written to the Chief Secretary, by the Sub-Judge, Islampur requesting production of certain papers is in order.

2. Order XVI, C.P.C. deals with summoning and attendance of witness to give evidence or produce document. Rule 8 in this Order provides that every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant and the rules in order V as to proof of service shall apply in the case of all summonses served under this rule. Rule 30(1) in Order V. enacts that the court may notwithstanding anything hereinafter contained substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is in the opinion of the court, of a rank entitling him to such mark ofconsideration. Reading these provisions together it is clear that letter writtn by the Sub.Judge is to be treated as a summons for production of documents under rule 6,) XVI,. Consequently no objection can be validly taken on this ground. The Court will arrange to pay the necessary expenses of the person who will attend the court with the documents (see rule 33 and 4 in Order XVI)

3. The next question for consideration is whether the documents called for by the sub-judge should be produced or privilege should be claimed in respect of all or any of them.

It is observed in the concluding part of para. 3 of the P. &S.D. office note that the last three documents (i.e. documents Nos. 4 to 6) are not quite necessary for the purpose of the present enquiry and it is suggested that objection to their production can be taken on that ground. Government is not a party to the suit and it would not therefore be competent for Government to resist production of documents on the ground of their being irrelevant. What Government will have therefore to do would be either to produce the documents or

claim privilege under section 123 or section 124 of the Indian Evidence Act. The question therefore for consideration would be whether privilege can be claimed in respect of all of any of the documents called for by the SubJudge.

Document No. 1 :- This relates to G.R. (P.D.) No. 1199, dated 4th May 1868 and the underlying papers. This Government Resolution does not contain anything confidential but in the body of the Government Resolution reference is made to the report of the settlement officer, the letter of the Collector of Satara and the concurrence of Her Majesty's Secretary of State for India, without which the Government Resolution would not be intelligible. These underlying references are unpublished official records and privilege to withhold production of them should be claimed under section 123 of the Evidence Act. A copy of the Government Resolution may however be offered and it should be produced if directed by the Court.

Document No. 2:- It relates to Her Majesty's Secretary of State's Despatch No 43 dated 16th September 1868 and the underlying papers. Privilege should be claimed under section 123 of the Evidence Act.

Document No. 3:- It relates to Government Resolution (P.D.) No 82 dated 5th January 1876 and the underlying papers. There is nothing confidential in the Government Resolution; but in the preamble thereto reference is made to letters and reports of officers in respect of which privilege should be claimed under sections 123 and 124 of the Evidence Act. A bare copy of the Government Resolution without the preamble may be produced, if directed by the Court.

Document No. 4 :- This relates to Government Resolution (P.D.) No 1400 dated 9th March 1886 and the underlying papers. By Government Resolution (P.D.) No. 1400 dated 9th March 1886 Government ordered that the name of Trimbakrao Anadrao Pant Mantri should be entered in the list of second class sardars for rand and precedence only and he should be given the

usual Poshak on his first attandence at the Agent's Durt the underlying papers relate to the correspondence in this connection. Privilege should be claimed under section 123 of the Evidence Act in respect of the Government Resolution and the underlying papers.

Document No. 5:- This relates to Government Resolution (P.D.) No. 7870 dated 20th December 1930 and the underlying papers. The Government Resolution contains nothing confidential; but the preamble contains the letter of the Collector and the endorsement of the Commissioner prigilege in respect of both of Evidence Act. Acopy of the Government Resolution without the preamble may be produced in directed by the Court.

Document No. 6.- This relates to Government Resolution (P.D.) No. 7370 dated 26th September 1931 and the underlying papers. What is stated in respect of document No. 5 equally applies to this.

The procedure in this connection should be followed as laid down in rule 176 of the Law Officers Rules.

Sd/- P.N.Moos
9-10-44

Remembrancer of Legal Affairs

U.R. to P & S.D. No. 7033, dated the 10th October 1944.

Mjr/4/6

4 Cs.

Office of the R.L.A.

The D.S.H.D's view that the summons should not be returned and its service should not be refused, is correct.

2. The attention of H.D. is invited to the instructions on procedure to be followed when a Government servant is summoned by a Court to produce official documents for the purpose of giving evidence, issued by the Government of India, H.D. in their letter No.F.661/35-Judicial, dated the 26th September 1935, transferred to H.D. under L.D; Memo. No 6065, dated the 23rd October 1935. In the present case, as the original letter to be produced by Mr. M.B. Gupte is in respect of a document emanating from the Government of India, the procedure mentioned in paras. 3 and 7 of the said instructions, will have to be followed. As there is no time to consult the Government of India, because the document is required to be produced on 4th November 1944, and it is decided by H.D. to claim privileges for the same under sections 123 and 124 of the Indian Evidence Act, 1872 (I of 1872), in place of the office order at page 7, a revised draft order, based on the draft furnished by the Government of India along with the said instructions, is sent herewith.

Sd/- P.N.Moos
1-11-44.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 7538, dated the 1st November 1944.

Mjr/4/6
4 Cs.

Office of the R.L.A.

A clerk with knowledge of the facts may be summoned to produce a copy of the table of conversion and expalin how and on what basis the table was complied. He will not of course be able to prove the correctness of that basis, namely that ~~xx~~ 6½ lbs- 1 payalee. That will have to be proved independently.

Sd/- P.N.Moss
7/11/44

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No 7733, dated 7th November 1944.

Mjr/4/6
4 Cs.

Office of the R.L.A.

It is not possible to resist on legal grounds the Solicitors' request for permission to inspect the document to which their client is a party. It is for the administrative Department to decide whether there is any objection to allowing inspection of the document of administrative grounds.

-Sd/- P.N.Moos
30/11/44

o.c.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 8452, dated the 1st December 1944.

Mjr/4/6
4 Cs.

Office of the R.L.A.

It appears that in "the case of the King Emperor v. Ismail Adbulali and other, Mr. Vasant Bhagwant Shringarpure, Inspector, Civil Supplies was examined for the prosecution. In his examination-in-chief he deposed that he got information from the public regarding the exorbitant prices charged at the shop of the accused for Parkar and Scheaffer pens. In his cross examination he was asked. "Who were the members of the public who gave the information?", he to which he replied that he was not bound to disclose the names. The court held that as there was nothing to show that information from out - side was in official confidence, witness was not entitled to refuse to disclose information. The question for the consideration of the R.L.A. is whether the view taken by the Court is correct.

2. It appears that the prosecution has objected to the question and the Court has disallowed the objection on the assumption that the relevant provision is section 124 of the Indian Evidence Act. That assumption does not appear to be correct. That section protects a public officer from being compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure. Since. Mr. Shrinagarpure in his examination-in-chief already disclosed the information, section 124 will have no application. What appears to have been objected to is the disclosure of the source of information. If so, the relevant provision would be section 125 of the Indian Evidence Act, which provides:

"No Magistrateor Police Officershall be compelled to say whence he got any information as to the commission of any offence/ and no Revenue Officer be complled to say whence he got any information as to the commission of any offence against the public revenues.

Explanation- "Revenue Officer" in this section means any officer employed in or about the business of any

P.T.O.

branch of the public revenue".

It is not known what is the exact legal position of Mr. Shringarpure. He does not appear to be a police officer. The offence in the present case does not appear to be one against public revenue. Consequently, even if he is a revenue officer, section 125 does not appear to afford him protection F.D.(Supply) should, however, consider whether Mr. Shirgarpure can have recourse to section 125 and if it is found that the answer is in the negative, no valid objection can be taken to the order of the Magistrate.

Id/P.H.Roos
25/4/45

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply) No. 4005, dated the 25th May 1945

Mjr/4/6
4 Cs.

Office of the R.L.A.

It is for the Political and Services Department to decide whether privilege should be claimed under section 123 or section 124 of the Evidence Act, in respect of Government Resolution (Political and Services Department), No. 7884, dated the 15th April 1931,,and Government Letter No, 899, dated the 16th May 1938. Prima facie there appears no objection to producing Government Resolution (Political and Services Department), No 7884, dated the 15th April 1931, munus the preamble and Government Letter No, 899, dated the 16th May 1939, since they contain nothing confidential or detrimental to the public interest.

If Political and Services Department decide to claim privilege, the procedure prescribed in rule 176(7) of the Law Officers Rules may be followed. If however Political and Services Department consider that there is no objection to producing them certified copies with the original may be sent to the Collector with instructions to depute some one from his office to attend the Court with thedocuments.

Sd/- P.N.Moos
3/10/45

o.c.

Remembrancer of Legal Affairs.

U.R. to Political and Services Department, No 734 dated the 4th October 1945.

Mjr/4/6

4 Cs.

The appearance of the District Government Pleader or Subordinate Government Pleader in Court to claim privilege in the present case is unnecessary. The procedure indicated by the R.L.A. in para. 2 of his last opinion No.7311, dated the 4th October 1945 may be followed.

Sd/-

o.c.

for Remembrancer of Legal Affairs.

U.R. to P and S.D., No 7684, dated the 17th October 1945.

Mjr/2/6

4 Cs.

Office of the R.L.A.

A party to a proceeding is entitled to inspect the documents produced by the other side. Consequently there appears no objection to giving the applicant a certified copy of the application made by his opponent to Government. (See section 76 of the Indian Evidence Act).

Sd/- P.N.Moos
30/11/45

o.c.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6978 , dated 1st December 1945.

MJr/4/6
4 Cs.

Office of the R.L.A.

The Political and Services Department have allowed the rather unsual procedure of issuing a general certificate of privilege while instructing the Collector to allow production in accordance with the advice of the R.L.A.(vide page 19, paragraph3) The R.L.A. now suggests the following course:-

The Chief Secretary may issue a fresh certificate cancelling the previous one, stating what documents or parts of documens he is willing to produce and what are the documents in respect of which claims privilege. The Subordinate Government Pleader at Islampur may then be instructed to support the new certificate on the grounds contained in the R.L.A's opinion and on the strength of the decision in Duncan v. Cammell Laird & Co., Ltd (1942) 1 A.E.R. 587. The Subordinate Government Pleader will probably have to expalin to the Court that the former order about privilege was drawn up under a misapprehension of the correct procedure of the Court and that in fact it was accompanied by instructions to the person appearing in Court, permitting production to the extent specified by the new order. This expalnation will show to the Court that the ordets of the head of the Department have not really varied.

All England Law Reports, (1942), Volume I, Part 18 is forwarded herewith. It may be sent to the Subordinate Government Pleader with instructions to return it as soon as it is done with.

Sd/- P.N.Moos
3/2/45

Remembrancer of Legal Affairs.

U.R. to P & S.D. No. 1051, dated the 3rd February 1945.

Mjr/4/6

4 Cs.

Office of the R.L.A.

Information given by the guardina may be partly from his personal knowledge and partly from information and belief. The verification clause at "A" at page 37 or the draft Circular may be worded as follows:-

"I, the undersigned, ... hereby declare that what is declared in paragraphs ... above is true to my own knowledge and what is declared in their emaning paragraphs is stated on information and belief and I believe the same to be true. "

No point of law is involved in the question whether Railway and Custom officers should be added/ to the list of officers mentioned in Note (F) of Part III of the draft Circular. It is for the administrative department to consider it from the parctical point of view it would be desirable to do so. The words "It is an offence to give false information in this declaration" have been rightly omitted from the Note in the draft of the revised Circular as desired by A(E) at pages 27-28 ante.

Sd/- P.N.Moos
Remembrancer of Legal Affairs.

U.R. to E.D., No. 2490 dated the 1st April 1946.

Mjr/4/6
4.Cs.

Under section 76 of the Indian Evidence Act the custodian of a public document which a person has a right to inspect, shall give on demand of a copy of the document with a certificate that it is a public document. The phrase "has a right to inspect" saves and excludes all such documents as the Government has a right to refuse to show on the ground of state policy, privileged communications etc. (see Sarkar's Evidence Act p. 622) . AGovernment Resolution, containing opinions of Government officers, including a legal adviser, is a privileged document within the meaning of section 123 of the Indian Evidence Act(see Sursingji Dajiraj vs. Secretary of State, 28 B.L.R./1213 at p.1217) Government Resolutions (R.D.) No. 6989 dated 5-4-1910 and No 5634/24 dated 18-3-1926 contain references to opinions of Government officers without which they are not intelligible. These Government Resolutions can therefore be treated as privileged documents the inspection of which can be regused. Consequently there is no objection to refusing Mr. Gharpure's request for certified copies of these Government Resolutions. If however Mr. Gharpure be dissatisfied with the Government's reply, it would be open to him to move the Court.

Sd/- R.T.Katarki
15/8

R.L.A.

I agree

Sd/-
16/8/46

U.R. to R.I. No. 5746, dated the 19th August 1946.

Mjr/4/6

4 Cs.

Office of the RLA.

Production of documents.

Indian Evidence Act, 1872. Sections 123 and 124.

There is no objection to the production of the applications made by Gauskhan Rasulkhan, item Nos. (2), (4) and (5) , as will as the two Government Resolutions , No. 1334, dated the 19th June 1890 and No. 4277, dated the 19th June 1890. As regards item (1), it appears that the court wants papers underlying the settlement offered to Mr. Gauskhan Rasulkhan in 1862. If so their production can be withheld on the gvound that they are an unpublished official record. Item No. (6) is R.L.A.'s opinion No. 1339 of 1888, the production of which can be withheld under section 124 of the Evindence Act. As regards item (3), the Court may be informed that the document is not available in Government record.

Id/-

P.M.L.

12/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6530 , dated the 12th July 1948.

Office of the R.L.A.

Indian Evidence Act.

Sections 24 to 27.

Amendments to -- proposed by the I.C.P. Bombay Province.

The only reform which might be made withe advantage is to give the opportunity to the accused to go into the witness box as has been done in England . Even that reform should not be under-taken unless ____

(1) it is undertaken ~~xxxxx~~ for the whole of India and

(2) the whole question is carefully gone into with the help of Judges.

The obher reforms must wait until the public develop greater confidence in the Police.

Id/-

P.M.L.

17/12.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 12059 , dated the 18th December 1948.

Office of the R.L.A.

Necessity of Panchnames in Motor Vehicle cases.

The Regional Transport Officer has been unable to trace the ruling relied on by him, nor does it appear that any such ruling has been given by the Bombay High Court. A panchanama is prima facie the evidence of facts noticed by Panchas and there would ordinarily be no legal objection to proving such facts by the evidence of persons who have witnessed them even in cases where a panchanama in respect of such facts was not made for whatever reason. However, the persons will naturally experience difficulty in recalling circumstances and events after lapse of time, and for that reason a written memorandum by way of a Punchanama is generally necessary.

Id/-

P.M.L.

28/12.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 12389 , dated the 29th December 1948.

Office of the R.L.A.

It is not possible to express any opinion definitely without examining the documents. However there is no objection to allowing inspection of public documents which would not include departmental proceedings. The auction sale proceedings would be in the nature of departmental proceedings. There is therefore no legal objection to accepting Superintending Engineer's proposal .

Id/-

P.M.L.

29/7.

Remembrancer of Legal Affairs.

U.R. to P.W.D. NO. 7172 , dated the 30th July 1948.

Office of the R.I.A.

Subsidised Milk Scheme opinion of Municipal Analyst.

The view at A of A.D.C.S.'s note at pages 53,54 ante is correct. The opinion of the Municipal analyst is entitled to weight and there is no reason why his opinion should not be accepted by the Court if the matter is taken to a court of law particularly when the counter samples, liable to be tampered with, were got provately examined by the suppliers not immediately but at long intervals.

Id/-

P.M.L..

26/8.

Remembrancer of Legal Affairs.

U.R. to M. Commr. No . 8217 , dated the 26th August 1943.

Seen and returned

When the executant is illiterate, he u
gives his thumb impression or mark which
is described as such by the scribe or the person
writing for him. The latter places the ame of the
executant against or below the mark and authenticates
it by his own signature.
(See Sarkar's Evidence Act, O.561).

Sd/- R.T.Katarki
12/3

R.L.A.

Sd/- P.M.Lad
12/3

U.R. to L.D. No. 2960, dated 16th March 1949.

Mjr4/6
4 Cs.

Office of the R.L.A.

oduction of
overnment
Resolution.

In Bombay Suit No. 3263 of 1947 which is filed by Mr. Haskell against the Government of Bombay, the Solicitors to Government propose to file an affidavit of documents on behalf of Government. Government Resolution, General Department, No. 5916/33, dated the 12th December 1946 under which Government directed that Mr. Haskell's services should be terminated in one of the documents included in the list and it is proposed to produce it if necessary.

The Government Resolution in question is at page 151 of G.D. File No 5193/33-III and as can be seen from the endorsements thereon, a copy of it was not addressed to Mr. Haskell) whose services were terminated theunder. Instead Mrl Haskell was informed of Government's decision by a separate Memorandum by the Director of Industries, a copy of which is at page 153 of the File mentioned above. In 1947, Haskoll's Solicitors called for a copy of the Government Order under which his services were terminated; but Government decided not to supply the order in question (vide proceedings in File 8072/6439, loose papers). In paragraph 7 of the plaint a grievance has been made of this fact.

These facts may be brought to the notice of the Solicitors to Government; and they may be informed that unless they think it necessary to produce the Government Resolution at this stage, it would be better to defer its production until a suitable state later. The Government Resolution should be included in the list of documents but privilege should be claimed in the affidavit as against the plaintiff and inspection refused. Later, if so advised privilege can be abandoned and the document produced in Court.

Ifthe Solicitors are agreeable to this proposal, they should be informed that the same policy should be adopted regarding other documents underlying the G.R. as e.g. the letter from the P.S.C.

Sd/- P.M.Lad 23/4

O.C.
Remembrancer of Legal Affairs.
No. 262-confl dated 26th April 1949

U.R. to [illegible] I.
Mjr/4/6

Office of the E.L.A.

Production of documents.

It is true that permission can be refused to produce unpublished official records in the Court; but a wholesale refusal is not likely to befavoured by the Court. The Court has supplied a list of documents that are required; and the Punlic Health Engineer should therefore, scrutinise the list carefully and if there are any documents disclosure of which will not be detrimental to public interests, he should allow their production. As regards documents, in respect of which he wants to claim privilege, he should pass an order in the from set out in Rule 176 of the Law Officers Rules and give it to the Head Clerk who is required to attend the Court. The prosecution is probably being conducted by the Public Prosecutor. If; so, the Public Health Engineer should consult him before he refuses production of the documents in court; otherwise refusal may prejudice the trial.

Sd/- P.M.Lad
10/12

O.C.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 776-confl dated the 12th December 1949

Mjr/4/6

4 Cs.

Office of the R.L.A.

idian Evidence
:t, 1872,
ıction 35:
ıether certifi-
ıtes of Baptism have
ıe same probative
ılue as certifi-
ıtes of birth.

Under section 35 of the Indian Evidence Act, 1872, 'I of 1872), 'an entry in any public or other official book, register or record stating a fact in issue or a relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact'. The Births and Deaths Registers are maintained under the Births, Deaths and Marriages Registration Act, 1886, and the entries are made in such register by a public servant in the discharge of his official duty enjoined by the law of the country. Consequently, an entry in the Register of Births and Deaths is by Statute prima facie but not conclusive evidence. It appears from the decision in Queens Proctor v. Fry(1879 P.D. page 230) that Baptism registers were kept by the order of the Government of India and hence an entry in such register was admitted in evidence. That was a decision of 1879 and it appears that the Baptism Registers were maintained by an executive order of the Government of India. It is not known whether the same order has been contained or has been cancelled. At any rate, it is clear that the Baptism Registers have not been maintained under any statutory authority and, therefore, the entries in such Registers cannot have the same probative value as entries in the Births and Deaths Register, although even the latter are not conclusive proof.

Sd/- P.M.Lad
8/3
O.C
Remembrancer of Legal Affairs.

U.R. to P & S.D. No. 3266, dated the 9th March 1950
(Please also see R.L.A's/ U.R. to P & S.D. No 6769, dated 18-5-50 p. 35 ante.)

Mjr/4/6

4 Cs.

Office of the R.L.A.

Under section 76 of the Indian Evidence Act, every public officer having the cusotdy of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefore A 'punlic document' is defined in section 74 to include a document forming the acts or records of the case of public officers, legislative, judicial and executive and also of official bodies and tribunals. Although the proceedings before the Land Acquisition Officer may not have been held to be judicial proceedings in the strict sense of the term, that would be no reason for excluding them from the scope of section 74 and section 76. The right to demand a copy of a document is limited by the right to inspect it. It is no where laid down ~~~~ how the right of inspection of public documents is to be regulated. But the guiding principle is that when the right to inspect and to take a copy is not expressly conferred, the extent of such right depends on the interest which the applicant has in what he wants to copy, and on what is reasonably necessary for the protection of such interest. The common law right to inspect and take copies of public documents is likited by this principaa. If the case falls within this principle, the applicant should be given the copies of awards and also of depositions.

Sd/- P.M.Lad
4/5

cc.

Remembrancer of Legal Affairs.

forwarded to the Collector, Ahamadabad under R.L.A's No. 6213 dated 6-5-1950.

Mjr/4/6

4 Cs.

Office of the R.L.A.

Indian Evidence Act, 1872. Sec. 35. Whether certificates of Baptism have the same probative value as certificates of birth.

The legal position has been very accurately stated in the concluding sentence of the R.L.A's opinion No. 2266 dated the 9th March 1950. The entries in the Births and Deaths Register naturally enjoy a better evidentiary value than the entries in the Baptism Registers. But even the entries in the Births and Deaths Register cannot be regarded as conclusive, although in the great majority of cases they will be accepted as such in the absence of any challenge. There is no rule about what constitutes a proper and legal certificate of birth. It all depends upon the facts of each case whether the presumptive value which attaches to the entries in the Births and Deaths Register is rebutted by other evidence on record.

2. The Italian Consul may be advised that under the Indian Law entries in the Births and Deaths Register will be regarded as Prima facie evidence in the absence of evidence to the countrary.

Sd/ P.M.Lad

O.C.

Remembrancer of Legal Affairs.

U.R. to P. & G.D. No.6769 dated 18th May 1950.

Mjr/4/6

4 Cs.

It appears that one Shrimati Flavia Mores and others addressed a letter to the Hon'ble Minister (Home Department) on 15th January 1949, complaining against one David Fernandes of harassment and requested for an interview to express their feelings. They were granted an interview on 26th January 1949. and their statements were recorded by Shri Tonpe, P.A. to H.M., H.D. It appears that Shri Tonpe has recorded the substance of their statements on 28th January 1949 and submitted to H.M.,,H.D. for orders. H.M., H.D., directed Shri Quilter, Deputy Commissioner of Police, to look into the matter and report the result. Shri David Fernandes has filed a criminal complaint in the Presidency Magistrate's Court, Bandra, for defamation against Shrimati Flavia Morses and others. The Magistrate directed the production of the original application made to H.M. on 15th January 1949 and the Police report. That requisition has been complied with. The Magistrate has now asked for production of the document containing the substance of the imputations made by the accused against the complinant at their said interview with the Hon'ble Minister. The question raised for the R.L.A's consideration is whether the document containing the substance of the statements of Shrimati Flavia Morses and others recorded by Shri Tonpe, which is at p. 1 ante, should be produced.

The document in question contains a substance of the statements made by Shrimati Flavia Morses and others to the effect that "David Fernandes had made a complete nuisance of himself to several women and he seems to take savage delight in harassing them. They said that he was detained in the David Sassoon Reformatory School, Matunga, for about 10,years and on release he does not seemto have been cured of his criminal tendencies. He has no ostensible means of livelihood, etc." The relevant provisions under which the document can be withheld are contained in sections 123 and 124 of the Indian Evidence Act. Section 124 has no application to the present case as it covers communications made in official confidence, which expression would seem to indicate that the section applies to communications from the officer to another public officer. The note of Shri Tonpe.

contains the substance of allegations against Shri Fernandes, which allegations could not be deemed to have been made in official confidence. Under section 123, production can be withheld of a document which is an unpublished official record relating to any affairs of state. As observed by Viscount Simon L.C. in Duncan v. C. Laird & Co., Ltd. (1942 A.C. 624), the Minister ought not to take the responsibility of withholding a production except in cases where public interest would otherwise be damnified, ile., where disclosure would be injurious to national defence or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper function of the public service. The note of Shri Tonpe is not of that nature involving any public interest. Consequently, it would not be ffeasible to withhold production of the document under section 123, Secretary , H.D., considers that if the document is produced, parties are likely to call H.M. for cross-examination. This fear may not be well grounded for the note contains merely the substance of the statements made to Shri Tonpe and not to the Hon'ble Minister (Home Department). Ihave ascertained from Shri Tonpe that he made a note of the substance of what was told to him and the H.M. was not in any way concerned except that the note was later on submitted to him upon which he passed the order. Consequently, if at all any oral evidence is necessary, it would be the evidence of Shri Tonpe who made the note after hearing Shrimati Flavia Moraes and others. In the circumstances, there appears no objection to producing Shri Tonpe's note at p 1 ante.

Sd/- P.M. Lad
19/6

O.C.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 8390, dated the 19th June 1950

Mjr/4/6

4 Cs.

Office of the R.L.A.

Indian Evidence Act, Section 76.

Indian Forest Act, section 72(2),

The right of a member of the public to demand a copy of the document is limited by section 76 of the Evidence Act to a person who has a right to inspect. "The accused has no right to inspect the records in the custody of the Court in which he is being tried. He could look into documents filed by the prosecution at the trial" (see In. re. Swaminathan A 1944 M. 419) under 572(2) of the Indian Forest Act any evidence recorded in the inquiry under clause (d) of sub-section (1) shall be admissible in any subsequent trial beofre a Magistrate provided that it has been taken in the presence of the accused person. Consequently the accused person would not be entitled to inspection of the record of the inquiry unless and until the evidence recorded in the inquiry is produced before the Magistrate. If the accused cannot claim inspection of the record of the inquiry much less could the present applicant. Consequently he would not be entitled to demand copies of the records of inquiry.

Sd/- P.M.Lad

3/4

O.C.

Remembrancer of Legal Affairs.

U.R. to Agriculture and Forests Department, No 4636 dated the 5th April 1950.

Mjr/4/6

4 Cs.

Office of the R.L.A.

Since it is stated in the Government Resolution itself that the Director of Publicity should give wide publicity to the contents thereof and since it contains nothing confidential, there appears no objection to supplying a certified copy to the applicant.

Sd/- P.M.Lad

o.c.

Remembrancer of Legal Affairs

U.R. to R.D. No. 13322, dated the 19th September 1950.

Mjr/4/6

4 Cs.

Office of the R.L.A.

le. production of documents.

Indian Evidence Act.
Sections 123 and 124

The Summons issued to the Director of Public Health does not specify the particular documents required. The Summons to produce the document should specify in as clear terms as possible the particular documents required (Sarkar on Evidence, O.1265). In the present case, the Summons merely states " all correspond ence" and does not specify documents. The Director of Public Health should, therefore, in the first instance, get the list of particular documents required from the Corporation and on being supplied with the list consider the desirablity or otherwise of production of the documents in question in the light of the following.

2. The correspondence which tlk place with the Director of Public Health in connection with Dr. Mohile's removal and appointment of Drs. Rebello and Adranwala has been listed by him in paragraph 2 of his letter. It would be seen that all the items of correspondence, except (k) and (r) were addressed to him by the Commissioner or Government or by him to the Commissioner and Government in official confidence. Under section 124 of the Indian Evidence Act, no punlic officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by the disclosure. The correspondence is also unpublisheed official record and privilege can be claimed under section 123. The Director of Public Health should, therefore, claim privilege in respect of all the correspondence and refuse production. As regards the two communications which are addressed to the President, the documents are already in possession of the Corporation. This fact may be brought to the notice of the Court and the Corporation and the Corporation may be left to produce them if it considers it desirable

3. As regards the summons to the Assistant Director of Public Health, there is no objection to produce

P.T.O.

Government Resolution, General Department, No 8747, dated the 26th March 1936, as there is nothing in it of a confidential nature. The other correspondence that is required of him is not sent to this office and it is not possible to tender advice in respect of that correspondence. It should, however, be possible to the Assistant Director to claim privilege under section 123 or section 124 of the Evidence Act as that correspondence also must have been in official confidence and part of unpublished official records

Sd/- P.M.Lad

4/1

O.C.
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P. H.D., No. 13-Confl, dated the 5th Jnauary 1951

Mjr/4/6
4 Cs.

Office of the R.L.A.

Production of documents.

Indian Evidence Act, 1872, secs. 123 & 124

Privilege can be claimed under section 124 of the Evidance Act in respect of items Nos. 2,4,5,6 and 7. Privilege cannot be claimed under that section in respect of items 3 and 8 as they are not communications to a public officer or under section 123 unless those letters can be said to relate to any affairs of State. Those two letters however really do not relate to any affairs of the State.

The procedure to be followed when claiming privilege is laid down in Rule 176 of the Law Officers Rules

Sd/- J.R.Dhurandhar

6/6

o.c

Remembrancer of Legal Affairs.

U.R. to H.D. No. 8958, dated the 7th June 1951.

Mjr/4/6

4 Cs.

It is presumed that Shri B.K. Pesikaka is a Government servant. If so he continues to be in Government service till his services are terminated. Therefore he is subject to the ordersof Government while he is under suspension. That being so the summons should be served through the Head of the Office concerned on the Principle embodied in section 72 of the Criminal Procedure Code. This is particularly so because the summons is in respect of a matter which came to Shri Pesikaka's knowledge as a Government servant in discharge of his official duties.

2. Whether the Government should direct him to appear in the Court of the Magistrate is for the Government to consider. It appears that his evidence is essential for the cases which he has filed for offences under section 121 of the Motor Vehicles Act (Act No. IV of 1939). The offence is non-cognisable and triable summarily (See section 130 of the Act). and therefore if his is the only evidence to establish the offence the case will fail in his absence. But if there is other sufficient evilence to establish the offence, then the Magistrate can dispense with his pwesence and proceed with the case under the proviso to section 247, Criminal Procedure Code. If Government think the case are not important enough to justify the expense on Shri Pesikaka travelling allowance from Bombay to Haliyal and back, they may consider directing the withdrawal of the cases.

Sd/-

o.c. Additional Secretary to Government

U.R. to H.D. No. 10600, dated the 4th July 1951.

Mjr/4/6

4 Cs.

LEGAL DEARTMENT

The documents for which privilege from production in Court is to be claimed have not been sent to the Remembrancer of Legal Affairs for inspection. It, however, appears from the letter of the Director of Public Instruction dated ~~1st~~ 1-8-1951 that the documents are of a confidential nature and that the public interests would suffer by their disclosure. If so, privilege can be claimed under section 124 Evidence Act for such of those documents as are communications made to the public officer in official confidence. As to the documents which do not come in the above category, privilege can be claimed under sections 123 Evidence Act if they are unpublished official records relating to the affairs of State. In claiming privilege either under section 124 or section 123 the procedure laid down in Rule 176 of the Law Officers' Rules shall be followed.

o.c. Sd/- P.M.Lad

Additional Secretary to Government.

U.R. to E.D. No. 14535 dated the 12th September 1951.

Mjr/4/6

4 Cs.

Office of the R.L.A.

The question raised for the consideration of the R.L.A is whether the photo copy of the Elebenth Decree of the Raich Citizen Law dated the 25th November 1941, published in Dorlis in the German Government Gazette dated the 26th November 1941, produced by the Jewish Association along with a translation in English of the relevant portion thereof can be accepted an valid proof of the original.

Section64 of the Indian Evidence Act, 1872, provides that documents must be proved by primary evidence except in the cases thereinafter mentioned. Under section 62 " primary evidence" means the document itself produced for the inspection of the court. Explanation 2 to that section states that where a number of documents are all made by one uniform proces, as in the case of priating, lithography of photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original,. It is, therefore, clear that the photo copy of the aforesaid German decree is not primary evidence of the contents of the original. Evidently, the photo copy is secondary evidence falling under section 63(2). Under section 65 secondary evidence may be given of the existence, condition or contents of a document in the cases specified in clauses (a) to (g). Under clause (c) punlic document within the meaning of section 74 is specified. However, section 65 provides that in the case of public documents within the meaning of section 74 a certified copy of the document but no other kind of secondary evidence is admissible. Under section 74(1)(iii) the German decree is a public document. Under section 7844) the Acts of the Executive or the lproceedings of the Legislature of a foreign country may be proved by journals published by their authority or commonly received in that country as such or by a copy certified under the seal of

conted-- 2--

the country or sovereign, or by a recognition thereof in some Central Act, and under clause (6), public documents of any other class in a foreign country may be proved by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or Diplomatic Agent, that the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the law of the foreign country. It is, therefore, apparent that the photo copy of the German decree cannot be considered a valid proof of the original document. The Jewish Association's attention may be invited to the aforesaid provisions of the Evidence Act and it may be asked to produce a copy of the decree certified under the seal of the country.

Sd/- P.M.Lad
4/2

o.c.

Remembrancer of Legal Affairs.

Mjr/4/6
4 Cs.

Office of the R.L.A.

The question for R.L.A's consideration is whether there is any legal objection in supplying a copy of the Sanad at page 3 ante, to Shri S.G. Navari, which is required by him for proving title to a site in Poona, in a suit filed by him on behalf of Shri Raghavendra Swami Mutta.

Under section 76 of the Indian Evidence Act every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on paymentof the legal fees therefore. A "public document" is defined in section 74 to include a document forming the acts or records of the acts of the sovereign authority. The Sanad at page 3 ante, purports to be in the form of a letter dated 12th January 1788 from Madhavrao Narayan Pradhan to Anandrao Bhikaji Raste intimating the latter that Raghavendra Swami when he had been to Poona has purchased certain property for his Virdavan and Math and asking him to release the attachment of the villages of Handargal and Yeminur and restoring them to the Math of Raghavendra Swami. This document would therefore appear to fall within the scope of sections 74 and 76 . Refusal to grant copies thereof can only be justified under section 123 if it is an unpublished official record relating to any affairs of the State. The Settlement Commissioner has refused copies of this document on the ground that it would encourage litigation against Government as the villages mentioned in the grant have been since made Khalsa. These are no grounds for the refusal (Please see the remarks of Chagla C.J. in Lady Dinbai Petit V. Dominion of Indi a 53 B.L.R . 229 at p 250) There would therefore be no legal objection to giving a certified copy of the document at p 3 ante.

o.c. Sd/- P.M.Lad 27/3

Remembrancer of Legal Affairs

U.R. to R.D., No. 4719, dated the 28th March 1952.

Mjr/2/6
4 Cs.

Office of the R.L.A.

Production of documents.

Pursuant to an order made by the High Courts, C.S. has been called upon to produce the correspondence between His Highness the Maharaja of Dharampur and the Government of Bombay and the letters written by Shrimati Sushiladevi Bhatkal to the Government of Bombay on the subject of the building known as "Ivanhoe" at Quuens Road, Back Bay Reclamation, Bombay". P & S.D. states that the documents slipped A,B,C,D,E, and X,Y,Z, respectively are the only documents in their possession and that there is no objection to produce them. C.S., however, desires the R.L.A. to advise.

2. It is not clear at whose instance the order of the High Court has been made; but presumbaly it must have been made at the instance of the defendant, Sushiladevi, who is interested in the disclosure of the documents. The document at slip Z and those at slips Z and Y were written either by Sushilabai or her Solicitors and there would be no objection to their production. The documents at slips A,B and D, were written by the Maharaja and the one at E by his Solicitors whil the one at C is a letter from the C.S. to the Maharaja. This set of letters relates to the private transactions of the Maharaja and it forms part of the unpublished official record of Government which is generally privileged. However, before claiming privilege under section 123 of the Evidence Act, the Head of the Department has to decide whether disclosure would be against public interest. "The principle to be applied in every case is that document otherwise relevant and liable to production must not be produced if the public interest requires that they should be withheld. This test may be found to be satisfied either (a) by having regard to the contents of the particular document or (b) by the fact that the document belongs to a class which on grounds of public interest must as a class be withheld from production" (Duncan V.C. Laird and Co. Ltd., 1942 A.C. 624 followed in Dowager Lady Dinabai Peti

V ...

v. Dominion of India and another, Appeal No. 12 of 1950). Prima facie no public interest is likely to suffer by the disclosure of the documents in question and oridinarily there would be no objection to t heir disclosure. It is, however, for P. & S.D. to decide the matter by applying the test referred to above.

Sd/- P.M.Lad
27/3

C.C.

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 308-Confl, dated the 29th March 1952

Mjr/4/6
4 Cs.

No. 9274
Office of the
Remembrancerof Legal Affairs,
Bombay Castle (Bombay No.1) 4th June 0

To

The Director of Agriculture,
FCCNA.

Subject: Sulphate of Ammonia
Theft of -

Sir,

With reference to your letter Manr-72-I/273 dated the 8th May 1952, on the subject noted above, I have the honour to observe as follows:-

It is not clear for what purpose the Registers have been called for by the Magistrate; it is clear that the stock registers, which would contain entries regarding stocks of sulphate of ammonia in the godown concerned, would not contain anything the disclosure of which would be prejudicial to public interest; and if public interest is not likely to suffer there should ordinarily be no objection to the production of the documents. From p. 95 of File No 1. it the appears that the jt. Director of Agriculture has already decided to produce the books. That decision is correct and there would be no objection to implement that decision.

3. The papers of the case in two files received from you are enclosed. A copy of this letter is also endorsed to the Manager, Government Manure Mixing Factory, Bombay for information and necessary action

Yours faithfully,

Sd/- P.M.Lad

O.C.

Remembrancer of Legal Affairs.

Copy forwarded for information and necessary action to the Manager, Government Manure Mixing Factory, Bombay.

Mjr/4/6

4 Cs.

OFFICE OF THE R.L.A.

The confidential report of the Police Sub-Inspector, Anti Corruption Branch dated 22nd August 1950 to the Accountant General is a priviledged communication under section 124, Evidence Act, and Government is not bound to and cannot be compelled to disclose it.

Sd/-P.M.Lad

O.C. 7/7/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 654-Fonfl, dated the 8th July 1952.

Mjr/4/6

4 Cs.

OFFICE OF THE R.L.A.

Copies of documents.

Evidence Act, 1872, sec. 123.
R.L.A's opinion No. 308-Confl., dated 29-3-52

It would be seen that the Collector of Surat has based his order on the instructions he received in the Government Orders cited in the preamble and hence these Government Orders would be relevant and the party affected by the collector's order would ordinarily be entitled to have copies thereof. The request for copies can, however, be refused under section 123 of the Evidence Act for reasons of State or on account of injury to public interest. It has, however, been recently laid down that the privilege under section 123 of the Evidence Act should be rarely claimed and should only be claimed after the responsible Minister or the head of the department has fully satisfied himself that the document whose disclosure is being resisted is really a document relating to the affairs of the State and whose disclosure will result in injury to public interests (see Lady Dinabai Petit Vs. Dominion of India, 53, Bom L.R. 229; Chamrbagwalla v. Parpia 52 Bom. L.R. 231, and R.L.A's opinion No. 308-Confl., dated 29-3-1952). Public interest is not likely to suffer by disclosure of Development Department letter dated 19th June 1951 nor by the disclosure of a relevant extract from the Revenue Department's Memorandum viz. para 1 of the Memorandum together with clause (h) and (k) of the appended statement. There would, therefore, be no objection to grant copies of these documents. It may, however, be pointed out here that orders in G.R., R.D. No 4122 B/49 IV, dated 22nd June 1951 which relate to grant of land were not ~~f/f~~ relevant for the orders of the Collector and there was no necessity to cite them in the preamole. It is also not understood why a Collector's Order cancelling the monopoly was considered necessary when in fact Government had decided to repudiate the whole agreement and the company was informed accordingly by Government itself.

Sd/- P.M.Lad
Remembrancer of Legal Affairs.

O.C. 2174

U.R. to R.D. No. 6031, dated the 21st April 1952.

Mjr/4/6
& Cs.

Office of the R.L.A.

It is not clear which papers from this file are proposed to be produced. The file appears to contain only one letter from Mrs. Kamat (pp. 59-62) and an application in prescribed form (p. 65). It is not, therefore, known whether the other letter said to be written by Mrs. Kamat is the application at p 65 or whether it is contained in any other file. If the letters required to beproduced are these above mentioned there is no objection to their production in a Court of Law. Attention is invited to para 104 of the Secretariat Instructions and in future the Department concerned when making references should follow the instructions contained in that para.

Sd/- P.M.Lad
11/8/

o.c.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.), No 13158 , dated the 11th August 1952.

Mjr/4/6

4 Cs.

OFFICE OF THE R.LA.J.

Attention is invited to Rule 176 of the law officers Rules It is clear from these provisions that the document in the possession of Government is not disclosed when the public interest would suffer or is confiedntial and the disclosure would be detrimental to punlic interest or is a document which is in dis,ute in some other connection. The documents required by Messrs. Dapthary Ferreira and Diwan do not appear of this nature and if P. & S.D. sees no objection they can be produced in court if a summons is issued by the court. The letter No. 4077,,dated 16th November 1877 appears to be letter from the Roman Catholic Bishop to Government regarding transfer of Rev. Father Antonio Pereira's remains from Church of Margaon to Goa. Government Resolution, Ecclesiastical Department No. 115, dated the 23rd August 1881 relates to intramural interments and it is not clear what objection P. & S.D. have to its production particularly when it is also endorsed to certain private parties like the Roman Catholic Bishop and Rev. DeSouza. G.R. Ecc. Deptt. No. 12 dated 23rd January 1886 also relates to sanction for interment of Shri Pereira. There appears no objection to producing this Government Resolution also. G.R., E.D. No. 113 dated 10th December 1888 also relates to similar subject and contains the views of the Government that Government is opposed to intramural interments. Copies are addressed to Arch Bishop of Bombay and Municipal Commissioner. Letter No 528 dated 6th Febfurey 1889 contains the decision of Government that in future no intramural interments would be permitted but the letter is addressed to the Municipal Commissioner. As none of the documents are confidential and are not such as would prejudice public interests it would not be proper for Government to withhold their productions.

Sd/- P.M.Lad,
19/9

O.C. Remembrancer of Legal Affairs.

U.R..to P & S.D. No., 15493 , dated the 20th September 1952.

Mjr/4/6

4 Cs.

CONFIDENTIAL

Official of the R.L.A.

At this stage Government may inform Shri Gadgil of Lokamanya that Shri Salvi was not a Government employee in a Government school but was the Headmaster of the Kankavli High School which was in receipt of grant-in-aid.

In respect of the other part of Shri Gadgil's letter Government may first request him to supply us copies of the articles which have been made the basis of the prosecution and also a copy of Shri Salvi's compliant. If Government finds that the articles were written in defence of Government's policy in this matter, Shri Gadgil deserves such help as can be given with propriety.

Sd/- P.M.Lad,
19/9/

cc. Remembrancer of Legal Affairs.

U.R. to R.D., No. 984/A-confl, dated the 19th September 1952

Mjr/4/5
4 Cs.

OFFICE OF THE R.L.A.

The Court has called for the original application dated 1st April 1950. That application is missing and the Court should be informed of that fact. As however that application is missing from the custody of the Government and the Government has received a copy of that application from the very party who made the original application, there is no objection to inform the Court that although the original is missing a copy of that application received by the Government in December 1951 from the same party is avialble and can be produced if the Court do ~~fixxxyx~~ directs.

The Court has also asked for production of " statements, reports and other papers pertaining the same". It is not clear what statements, reports and other papers are required. These should be got specified, as it is not possible to decide whether or not privilege should be claimed for them under section 124 or any other section of the Evidence Act.

Sd/- P.M.Lad

O.C. 24/9/
Remembrancer of Legal Affairs.

U.O. to H.D. No. 15732. dated the 24th September 1952.

Mjr/L/6

4 Cs.

Legal Department.

Under section 34 of the Indian Evidence Act, 1872, entries in account books regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. In the present case, it is admitted that the accounts have not been kept by Messrs. Bharat Agencies, Satara City, and Consequently, even the ordinary proof which is required under section 34 of the evidence Act, is not available to support the claim. It is alleged by the firm that not only did they supply articles to the Camp Commandant on his written orders, but that some articles were also supplied to the Camp at the oral request of the Camp Commandant for which no receipts were obtained from him. Obviously, it would not be p possible to admit the claim in respect of the articles which were supplied at the oral ~~request~~ request of the Camp Commandant unless there is very convincing proof in support of this claim, which proof appears to be wanting. Merely an affidavit by the firm would not be sufficient to support the claim in respect of such items particularly when there are no accounts and there is no reason why these articles should have been supplied at the oral request of the Camp Commandant. The claim also appears to be now time-barred- This may, however, be verified from the date of issue of the articles as alleged by the firm.

Sd/- P.M.Lad
30/10/.

e.c.

Remembrancer of Legal Affairs;

U.R. to R.H.D., No. 16034/A dated the 31st October 1952.

Mjr/4/6

4 Cs.

Office of the R.L.A.

Official Communications supply of copies of. to Municipal Corporation.

The Director of Public Instructions' letters being official communications can be treated as confidential. Copies of those letters need not be supplied to the Municipality, if the Department is of opinion that it is inexpedient to supply them

Sd/- P.M.Lad

28/11

a.c. Remembrancer of Legal Affairs.

U.R. to E.D., No. 199111/A, dated the 28th November 1952.

Mjr/4/6

4 Cs.

Legal Department

In his opinion No 2940 dated 26th March 1947 the R.L.A. has held that a Government Resolution is a public document. But all communications between the Ministers of State with regard to public matters or public functions and all expressions of opinion in the conduct of public duties by the officers of State, and all records and documents in which the opinions, or orders of public officers relating to other public officers are continued, grade are absolutely privileged and cannot be compelled to be produced in a Court of Law. (See Jehangir Vs. Secretary of State, 5 Bom L.R. 30, p. 47; Subsingji Vs. Secretary of State 28 B.L.R. 1213 at p. 1217). Although therefore the draft Government Resolution would be a public document there would be no difficulty in claiming privilege under section 124 of the Evidence Act on the ground that it contains fonfidential opinions of the Government.

Sd/-
13/12

o.c.

Solicitor to Government.

U.R. to L.S.G. & O.H.D. No. 1 304/E-confl dated the 15th December 1952.

Mjr/5/6
4 Cs.

Office of the R.L.A.

The disclosure of the landlord's representative's statement at pp. 21-22 and statement of the occupant of the premises at pp. 6-7,11, 28-29 are not such as would be inuurious to public interest and are not matters of State and therefore, there would be no objection to producing them. It is for the Court to decide whether these documents will help the parties in the disposal of the suit.

Sd/B.H.Lad
15/12

o.c.

Remembrancer of Legal Affairs.

U.R. to R.D., ( ) No 21227/E, dated the 17th December 1952.

Mjr/5/6
4 Cs.

Legal Department.

There appears no objection to producing the caretaker application and correspondence following it. There is also no objection to producing Government orders at pages 23-25 ante and letters addressed to and / or by the parties. The office notes, police reports and Inspector's reports may not be produced and if necessary privilege may be claimed in respect thereof.

Sd/- 13/12

O.C.

for Secretary to Government

U.R. to R.D. (accommodation), No 21010/E, dated the 13th December 1952.

Mjr/5/6

4 Cs.